

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 7, 2015 at 10:00 a.m.**

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No written opposition has been filed to the following motions set for argument on this calendar:

2, 3, 7

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

**MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS.** THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

**ITEMS WITH TENTATIVE RULINGS:** IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

December 7, 2015 at 10:00 a.m.

**TO DEVELOP THE WRITTEN RECORD FURTHER.**

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JANUARY 4, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 21, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 28, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

**ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.**

**ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.**

### **MATTERS FOR ARGUMENT**

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| 1. | 15-26013-A-7     ROBERT BALLANTYNE<br>MOH-1<br>VS. CITIBANK, N.A. | MOTION TO<br>AVOID JUDICIAL LIEN<br>11-9-15 [14] |
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**Tentative Ruling:**     The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Citibank for the sum of \$6,673.16 on November 2, 2011. The abstract of judgment was recorded with Butte County on December 5, 2011. That lien attached to the debtor's residential real property in Chico, California. The debtor is seeking avoidance of the lien.

The motion will be denied because the debtor's evidence of value for the property is inadmissible. Although the debtor purports to value the property himself, he states that his valuation is based on what zillow.com says about the value of the property.

But, what zillow.com says about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from anyone working at zillow.com in this record, much less a declaration qualifying zillow.com as an expert and establishing the methodology by which zillow.com determined the value of the property. See Fed. R. Evid. 702.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9<sup>th</sup> Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. As a result, his opinion of value is inadmissible.

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| 2. | 15-27053-A-7     TARLOCHAN/HARPREET<br>HSM-1             DHALIWAL<br>EH NATIONAL BANK VS. | MOTION FOR<br>RELIEF FROM AUTOMATIC STAY<br>10-7-15 [17] |
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**Tentative Ruling:**     The motion will be granted.

The movant, EH National Bank, seeks relief from the automatic stay as to a real property in Palermo, California. The movant has produced evidence that the property has a value of \$300,000. Docket 21 at 2.; Docket 22, Ex. K. The movant's deed is the only encumbrance against the property, securing a claim for \$619,612.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

To the extent applicable, the court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure

Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

3. 15-26657-A-7 ROBERT/LEE-ANN MAHAN MOTION TO  
MRL-4 AVOID JUDICIAL LIEN  
VS. NORTHERN CAL. COLLECTION SVC., INC. 11-19-15 [111]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against the debtor Robert Mahan in favor of Northern California Collection Service, Inc. for the sum of \$15,501.39 on July 15, 2009. The abstract of judgment was recorded with El Dorado County on October 7, 2009. That lien attached to the debtor's residential real property in Shingle Springs, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$699,000 as of the petition date. Dockets 114 & 21. The unavoidable liens totaled \$934,175 on that same date, consisting of a mortgage in favor of BSI Financial Services for \$841,210 and a mortgage in favor of Alliant Credit Union for \$92,965. Docket 21. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. Dockets 21 & 39.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. 15-22060-A-7 MICHELLE GEORGE MOTION TO  
DEF-2 AVOID JUDICIAL LIEN  
VS. BUDGET RENT A CAR SYSTEMS, INC. 10-26-15 [26]

**Tentative Ruling:** The motion will be denied.

The debtor is seeking avoidance of a judicial lien held by Budget Rent A Car System, Inc., encumbering his real property in Sacramento, California.

However, the attached evidence in support of the motion does not reflect a lien held by Budget Rent A Car System, Inc. The abstract of judgment attached to the motion reflects a lien held by the City of Sacramento. Docket 29, Ex. B. As there is no evidence of the lien held by Budget Rent A Car System, Inc., the motion will be denied.

The motion will be denied also because the court already adjudicated a motion by the debtor to avoid the judicial lien of Budget Rent A Car System, Inc. At the July 13, 2015 hearing on the prior lien avoidance motion, after the debtor's counsel failed to appear, the court adopted its tentative ruling, granting in part and denying in part the motion to avoid the lien of Budget Rent A Car System, Inc. This is the final ruling of the court.

*"Tentative Ruling: The motion will be granted in part and denied in part.*

*"A judgment was entered against the debtor in favor of Budget Rent A Car System, Inc. for the sum of \$22,722.61 on March 30, 2009. The abstract of judgment was recorded with Sacramento County on April 30, 2009. That lien attached to the debtor's residential real property in Sacramento, California.*

*"The motion will be granted in part pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$189,000 as of the petition date. Dockets 18 & 1. The unavoidable liens totaled \$95,000 on that same date, consisting of a single mortgage in favor of Safe Credit Union. Dockets 18 & 1; see also Docket 14. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000 in Schedule C. Docket 1.*

*"The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is only \$19,000 in equity to support the judicial lien (\$189,000 property value minus (\$95,000 of unavoidable liens plus \$75,000 exemption claim)).*

*"Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property only to the extent of \$3,722.61 and its fixing will be avoided up to that amount subject to 11 U.S.C. § 349(b)(1)(B)."*

Docket 25.

Accordingly, this motion will be denied.

5.	15-20865-A-7     JOHN/MERRIE HOLMAN	OBJECTION TO
	RAH-2	CLAIM
	VS. RODNEY/SHIRLEY BROWN	10-16-15 [157]

**Tentative Ruling:** The objection will be overruled.

The debtors object to general unsecured proof of claim 1-2, in the amount of \$42,758.30, filed by creditors Rodney and Shirley Brown, arguing that the claim should be allowed in its original amount of \$10,205. The Browns filed their claim in the amount of \$10,205 on April 1, 2015, but increased it to \$42,758.30 in an amended claim filed on August 11, 2015.

The objection will be overruled as the debtors have not established their standing to object to the Browns' proof of claim. Ordinarily, the trustee or some party in interest other than the debtor prosecutes claim objections, and the debtor, in his individual capacity, lacks standing to object to a proof of claim unless the debtor demonstrates that he would be injured in fact by allowance of the claim. See In re An-Tze Cheng, 308 B.R. 448, 454 (B.A.P. 9<sup>th</sup> Cir. 2004).

The debtors have not demonstrated that they are injured in fact by the allowance of the Browns' proof of claim, even if the claim lacks merit. For instance, there is no evidence here that this is a surplus estate that would result in the return of assets back to the debtors or that disallowance of this claim will result in a higher dividend paid to nondischargeable claims.

6. 15-25167-A-7 ERIC/KIMBERLY BONNIKSEN MOTION TO  
HLG-2 AVOID JUDICIAL LIEN  
VS. CACH, L.L.C. 11-6-15 [21]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor Eric Bonniksen in favor of CACH, L.L.C. for the sum of \$25,282.39 on November 19, 2014. The abstract of judgment was recorded with El Dorado County on June 15, 2015. That lien attached to the debtor's residential real property in Camino, California. The debtor seeks avoidance of the lien.

The motion will be denied as the debtor has produced inadequate and conflicting evidence of value for the property. The debtor's evidence of value for the property is based on his opinion of value in Schedule A, which in turn is based on zillow.com.

But, what zillow.com says about the value of the property is inadmissible hearsay. See Fed. R. Evid. 802. The court has no declaration from anyone working at zillow.com in this record, much less a declaration qualifying zillow.com as an expert and establishing the methodology by which zillow.com determined the value of the property. See Fed. R. Evid. 702.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9<sup>th</sup> Cir. 2004). Yet, this is not the basis upon which the debtor relies to render opinion of value. As a result, the evidence of value is inadmissible.

Further, the debtor has produced conflicting evidence of value. According to the debtor, the property had a value of \$420,000 as of the June 26, 2015 petition date.

However, in the debtor's November 6 declaration in support of this motion, the debtor admits that the property has increased in value by \$345,000, to \$765,000, in just about four months since this case was filed. Docket 23. This is impossible as even the best real estate market, in the best of economic times - which is not the case here - cannot gain 45% even in a single year. As such, the court is unpersuaded by the debtor's evidence of value. Accordingly, the motion will be denied.

7. 14-31174-A-7 TAMARA FELDER  
MOH-1

MOTION TO  
COMPEL ABANDONMENT  
11-13-15 [19]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in her real property in Chico, California. The entire equity in the property is exempt.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The debtor has scheduled the value of the property at \$220,000. The property is encumbered by a first deed of trust in favor of JP Morgan Chase Bank in the amount of \$86,595 and a second mortgage in favor of Butte Federal Credit Union in the amount of \$60,247, for a total of \$146,842. The debtor has exempted \$73,158 in the property pursuant to Cal. Code Civ. Proc. § 704.710.

Given the scheduled value of and encumbrances against the property, and the debtor's exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

8. 15-26488-A-7 ERIC/KARRI BENSON  
PPR-1  
THE BANK OF NEW YORK MELLON VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
10-28-15 [15]

**Tentative Ruling:** The motion will be granted in part and denied in part.

The movant, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Davis, California.

With respect to the debtor, the property has a value of \$719,000 and it is encumbered by claims totaling approximately \$661,441. Costs of sale are not encumbrances for purposes of the analysis under 11 U.S.C. § 362(d)(2). The movant's deed is the only encumbrance against the property. This leaves approximately \$57,558 of equity in the property.

Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood

Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.), 54 F.3d 722, 730 (11th Cir. 1995).

The movant has an equity cushion of approximately \$57,558. This equity cushion is sufficient to adequately protect the movant's interest in the property until the debtor obtains a discharge or the case is dismissed or closed without entry of a discharge. See 11 U.S.C. § 362(c)(1) & (c)(2).

The court notes that the United States Trustee has filed a motion to dismiss the case under 11 U.S.C. § 707(b). Docket 24.

The automatic stay will expire as a matter of law when the debtor obtains a discharge or the case is dismissed or closed without entry of a discharge. 11 U.S.C. § 362(c)(2). The debtor was scheduled to obtain a discharge in this case soon after November 16, 2015.

Thus, relief from stay as to the debtor under 11 U.S.C. § 362(d)(1) is not appropriate either. The motion will be denied as to the debtor.

As to the estate, the analysis is different. The trustee has filed a non-opposition to this motion. This is cause for the granting of relief from stay as to the estate. Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9<sup>th</sup> Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of



the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

**FINAL RULINGS BEGIN HERE**

9. 15-23101-A-7 GREGG/KAREN RAMPENTHAL MOTION TO  
MOH-3 AVOID JUDICIAL LIEN  
VS. DISCOVER BANK 10-29-15 [40]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against debtor Karen Rampenthal in favor of Discover Bank for the sum of \$3,506.88 on September 6, 2013. The abstract of judgment was recorded with Butte County on October 7, 2013. That lien attached to the debtor's residential real property in Oroville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$75,000 as of the petition date. Dockets 42 & 44. The unavoidable liens totaled \$86,179.91 on that same date, consisting of a single mortgage in favor of Ocwen. Dockets 42 & 44. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$25,575 in Schedule C. Dockets 42 & 44.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

10. 09-32012-A-7 AILENE SCOTT MOTION TO  
VS. GE MONEY BANK AVOID JUDICIAL LIEN  
10-5-15 [19]

**Final Ruling:** The motion will be denied without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1 because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar.

Further, the motion violates Local Bankruptcy Rule 9014-1(c) because the motion papers do not contain a unique docket control number. This requirement avoids any confusion in locating and identifying papers filed in connection with the motion.

Additionally, although the motion asserts that the value of the property is \$280,000, the debtor's Schedule C - attached to the motion - lists the value of the property as \$201,000. Schedules A and D, Docket 1, also list the value of the property as \$201,000. This discrepancy should be corrected. Another discrepancy is the amounts of the unavoidable liens against the property. The figures in the motion do not coincide with the figures in Schedule D. And, the appraisal of the property attached to the motion is not supported by a declaration authenticating it. Without such a supporting declaration, the appraisal is inadmissible hearsay. Fed. R. Evid. 802.

A debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9<sup>th</sup> Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9<sup>th</sup> Cir. 2000). The attached appraisal of the property is as of April 9, 2015 and not as of the June 12, 2009 petition date.

Finally, in Schedule C, the debtor has claimed an exemption of \$0.00 in the property encumbered by the judicial lien as to which the debtor seeks avoidance.

However, one of the requirements for the avoidance of a lien is that the subject property must be listed on the debtor's schedules and claimed as exempt. In re Mohring, 142 B.R. 389, 392-93 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9<sup>th</sup> Cir. 1993), *affirmed*, 24 F.3d 247 (9<sup>th</sup> Cir. 1994). Claiming an exemption of \$0.00 is tantamount to claiming no exemption because a judicial lien cannot reduce an exemption value of \$0.00. See, e.g., In re Berryhill, 254 B.R. 242, 244 (Bankr. N.D. Ind. 2000). The formula in section 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." Claiming an exemption of \$0.00 reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of the liens, he may not claim an impairment of such an exemption. Accordingly, the motion will be denied.

11. 12-28413-A-7 F. RODGERS CORPORATION MOTION FOR  
JDF-1 RELIEF FROM AUTOMATIC STAY  
TAYLOR MORRISON SERVICES OF CA, L.L.C. VS. 11-5-15 [842]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Taylor Morrison Services of CA, L.L.C., seeks relief from the automatic stay to proceed in state court with its construction defect claims against the debtor. Recovery will be limited to available insurance coverage, if any.

Given that the movant would not seek to enforce any judgments against the debtor or the estate and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief from the automatic stay. The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to allow the movant to prosecute the claims against the debtor, but not to enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

- |     |                             |             |                      |
|-----|-----------------------------|-------------|----------------------|
| 12. | 14-29813-A-7                | LISA AHRENS | AMENDED OBJECTION TO |
|     | DNL-2                       |             | CLAIM                |
|     | VS. GOLDEN ONE CREDIT UNION |             | 10-23-15 [26]        |

**Final Ruling:** The hearing on the objection will be continued to January 19, 2016 at 10:00 a.m.

The trustee objects to the unsecured portion of The Golden 1 Credit Union's \$17,282.29 proof of claim, POC 1. The proof of claim contains secured and unsecured portions. The secured portion, \$13,907, is secured by a 2013 Mazda 6 vehicle. The unsecured portion of the claim, a deficiency of \$3,375.29, is based on a the vehicle's \$13,907 value as of the petition date, as listed by the debtor in her Schedule B. Docket 1; Docket 9, Amended Schedule B.

The court will continue the hearing on the objection as both the trustee and Golden 1 have asked for a continuance. The court will continue the hearing on the objection to January 19, 2016 in order to allow the trustee to submit evidence on his attorney's fees and costs in litigating this objection and for Golden 1 to obtain and submit its own appraisal of the vehicle.

By continuing the hearing on the objection, the court is by no means adjudicating the merits of the objection. The record on the objection is closed except for the submission of further evidence as outlined above.

The trustee shall have until December 21, 2015 to file and serve its evidence. Golden 1 shall have until January 4, 2016 to submit its evidence and respond to the trustee's additional evidence. The trustee may file a reply, responding to Golden 1's evidence, no later than January 11, 2016.

- |     |                                 |           |                            |
|-----|---------------------------------|-----------|----------------------------|
| 13. | 15-27213-A-7                    | GINA WEST | MOTION FOR                 |
|     | BHT-1                           |           | RELIEF FROM AUTOMATIC STAY |
|     | THE BANK OF NEW YORK MELLON VS. |           | 11-6-15 [19]               |

**Final Ruling:** The motion will be dismissed as moot because the case was dismissed on November 24, 2015, automatically dissolving the stay. See 11 U.S.C. § 362(c)(2)(B). The motion is not requesting relief under 11 U.S.C. § 362(d)(4).

- |     |                            |                         |                            |
|-----|----------------------------|-------------------------|----------------------------|
| 14. | 14-24449-A-7               | ROBERT/KATHLEEN BRANSON | MOTION FOR                 |
|     | EAT-1                      |                         | RELIEF FROM AUTOMATIC STAY |
|     | WELLS FARGO BANK, N.A. VS. |                         | 7-28-15 [71]               |

**Final Ruling:** The hearing on this motion has been continued to February 29,

15. 10-32951-A-7 TOM/WANDA HERRMANN  
DNL-2

MOTION TO  
APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
11-6-15 [43]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$2,665 in fees and \$47.08 in expenses, for a total of \$2,712.08. This motion covers the period from June 10, 2010 through October 13, 2015. The court approved the movant's employment as the trustee's attorney on June 25, 2010. In performing its services, the movant charged hourly rates of \$175, \$275, \$350, and \$375.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) investigating the estate's interest in an inheritance and a severance pay, (2) reviewing the probate case, (3) communicating with the executor of the probate estate, (4) preparing demand letters pertaining to a promissory note, (5) generally advising the trustee about the administration of the estate, and (6) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

16. 15-24657-A-7 DAN KEITGES  
FF-1  
VS. THE TERRACES AT DUBLIN RANCH

MOTION TO  
AVOID JUDICIAL LIEN  
10-27-15 [26]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of The Terraces at Dublin Ranch Villages Owners Association for the sum of \$5,125 on November 19, 2013. The abstract of judgment was recorded with El Dorado County on January 15, 2014. That lien attached to the debtor's residential real property in el Dorado Hills, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$475,000 as of the petition date. Dockets 30 & 1.

The court rejects the debtor's current valuation of the property at \$437,000. A debtor's rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9<sup>th</sup> Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9<sup>th</sup> Cir. 2000). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the petition date and not some time post-petition.

The valuation of the property by Pamela Palmer, in support of this motion is as of October 23, 2015, whereas this case was filed on June 9, 2015, as of which date the debtor valued the property at \$475,000. Dockets 29 & 1.

The unavoidable liens totaled \$467,086.42 on that same date, consisting of a single mortgage in favor of Caliber Home Loans. Dockets 30 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$15,604.58 in Schedule C. Dockets 30, 1, 13.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

17. 11-34464-A-7 STUART SMITS  
KJH-3

MOTION TO  
APPROVE COMPENSATION OF TRUSTEE  
11-6-15 [354]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The chapter 7 trustee, Kimberly Husted, has filed first and final motion for approval of compensation. The requested compensation consists of \$15,410.74 in fees and \$1,792.03 in expenses, for a total of \$17,202.77. The services for the sought compensation were provided from March 1, 2012 through October 21,

2015. The sought compensation represents 87.5 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made \$243,214.88 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is \$15,410.74 (\$1,250 (25% of the first \$5,000) + \$4,500 (10% of the next \$45,000) + \$9,660.74 (5% of the next \$950,000 (or \$193,214.88))). Hence, the requested trustee fees of \$15,410.74 do not exceed the cap of section 326(a).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance L.L.C. (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9<sup>th</sup> Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) employing professionals to assist the estate in the administration of estate assets, (4) analyzing complex issues about ownership interests in various entities, (5) negotiating the sale of assets and the compromise of controversies, (6) abandoning assets, (7) monitoring and addressing issues in pending non-bankruptcy litigation, (8) communicating with the estate's professionals about various issues, (9) reviewing and analyzing claims, (10) addressing tax issues, (11) preparing final report, and (12) preparing compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

18. 15-23465-A-7 ROBERT COONS MOTION TO  
CAH-2 AVOID JUDICIAL LIEN  
VS. FORD MOTOR CREDIT COMPANY, L.L.C. 11-19-15 [46]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Ford Motor Credit Company, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of

process." Docket 51.

19. 15-23465-A-7 ROBERT COONS MOTION TO  
CAH-3 AVOID JUDICIAL LIEN  
VS. FORD MOTOR CREDIT COMPANY, L.L.C. 11-19-15 [52]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Ford Motor Credit Company, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 57.

20. 15-23465-A-7 ROBERT COONS MOTION TO  
CAH-4 AVOID JUDICIAL LIEN  
VS. FORD MOTOR CREDIT COMPANY, L.L.C. 11-19-15 [58]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Ford Motor Credit Company, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 63.

21. 15-23465-A-7 ROBERT COONS MOTION TO  
CAH-5 AVOID JUDICIAL LIEN  
VS. FORD MOTOR CREDIT COMPANY, L.L.C. 11-19-15 [64]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Ford Motor Credit Company, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 69.



22. 15-27466-A-7 PRAMTESH/RANJANA MAHARAJ MOTION TO  
TAG-1 AVOID JUDICIAL LIEN  
VS. LVNV FUNDING, L.L.C. 10-28-15 [14]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on LVNV Funding, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." The service has been addressed only to "Bankruptcy/Manager," which does not fulfill the requirements of Rule 7004(b)(3).

And, while the debtor served LVNV's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

23. 14-32070-A-7 CAPITOL AIR SYSTEMS, MOTION TO  
JRR-5 INC. APPROVE COMPENSATION OF ACCOUNTANT  
10-14-15 [177]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of \$3,416 in fees and \$5.95 in expenses, for a total of \$3,421.95. This motion covers the period from February 26, 2015 through September 3, 2015. The court approved the movant's employment as the estate's accountant on March 2, 2015. Docket 113. In performing its services, the movant charged hourly rates of \$100, \$200 and \$330.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the preparation of tax returns.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The chapter 7 trustee, John Roberts, has filed first and final motion for approval of compensation. The requested compensation consists of \$12,385.81 in fees and \$554.14 in expenses, for a total of \$12,939.95. The services for the sought compensation were provided from May 21, 2012 through October 14, 2015. The sought compensation represents 94.87 hours of services.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made \$182,716.17 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is \$12,385.81 (\$1,250 (25% of the first \$5,000) + \$4,500 (10% of the next \$45,000) + \$6,635.81 (5% of the next \$950,000 (or \$132,716.17))). Hence, the requested trustee fees of \$12,385.81 do not exceed the cap of section 326(a).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance L.L.C. (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9<sup>th</sup> Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation: (1) reviewing petition documents and analyzing assets, (2) conducting the meeting of creditors, (3) employing professionals to assist the estate in the administration of estate assets, (4) selling assets of the estate, including a cardroom business, related businesses and licenses (5) negotiating disputed claims and participating in a related mediation, (6) addressing licensing requirements with the California Gaming Commission, (7) reviewing and analyzing claims, (8) addressing tax issues, (9) preparing final report, and (10) preparing compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

25. 14-31077-A-7 VINCENT LO FRANCO AND MOTION TO  
MDA-3 MISTI SMITH AVOID JUDICIAL LIEN  
VS. GE CAPITOL RETAIL BANK, ET AL. 10-29-15 [35]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against debtor Misti Russell in favor of Portfolio Recovery Associates, L.L.C. for the sum of \$2,570.45 on May 22, 2014. The abstract of judgment was recorded with El Dorado County on June 13, 2014. That lien attached to the debtor's residential real property in Placerville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$126,000 as of the petition date. Dockets 38 & 1. There are no unavoidable liens against the property. Dockets 28 & 1. The debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000 in Amended Schedule C. Dockets 38, 37, 28.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

26. 10-32879-A-7 ANTHONY BOCHENE MOTION FOR  
ASW-1 RELIEF FROM AUTOMATIC STAY  
WILMINGTON TRUST, N.A. VS. 10-29-15 [63]

**Final Ruling:** The motion will be denied as unnecessary. The movant, Wilmington Trust, seeks relief from the automatic stay as to a real property in Soda Springs, California. However, there is no automatic stay in this case. This case was filed on May 17, 2010 and was administratively closed on September 27, 2010, which automatically dissolved the stay. Docket 27; see 11 U.S.C. § 362(c)(2)(A). Although the case was reopened on February 3, 2012 (Docket 31), nothing resurrected the stay. There is no stay in this case and this motion is unnecessary. The court also notes that the motion is not seeking nunc pro tunc or section 362(d)(4) relief. The motion will be denied.

27. 15-26281-A-7 STEPHEN TRUMAN  
UST-1

MOTION TO  
EXTEND TIME TO FILE MOTION TO  
DISMISS CASE  
10-29-15 [25]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The U.S. Trustee seeks a 168-day extension, from November 13, 2015 to April 29, 2016, of the deadline for filing motions to dismiss under 11 U.S.C. § 707(b). The U.S. Trustee seeks the extension because she is still conducting an audit of the debtor's case and needs the additional time to complete the audit.

11 U.S.C. § 707(b) and Bankruptcy Rule 1017(e)(1) provide that dismissal motions may be brought by the U.S. Trustee and must be filed within 60 days of the first date set for the meeting of creditors. The court may grant an extension upon a showing of cause. The motion for an extension must be filed before the expiration of the 60-day deadline. Bank. R. 1017(e)(1).

The initial meeting of creditors here was set for September 14, 2015. 60 days from that date was November 13, 2015. This motion was filed on October 29, 2015. Thus, the motion complies with the temporal requirements of Rule 1017(e)(1).

Given the need for further investigation of the debtor's financial affairs, cause for extension of the deadline exists. The motion will be granted and the deadline extended to April 29, 2016.

28. 15-26281-A-7 STEPHEN TRUMAN  
UST-2

MOTION TO  
EXTEND TIME TO FILE OBJECTION TO  
DISCHARGE  
10-29-15 [28]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The U.S. Trustee seeks a 168-day extension, from November 13, 2015 to April 29,

2016, of the deadline for filing complaints objecting to discharge under 11 U.S.C. § 727. The U.S. Trustee seeks the extension because she is still conducting an audit of the debtor's case and needs the additional time to complete the audit, before deciding whether to file a section 727 complaint.

Bankruptcy Rule 4004(b) provides that the court may extend the deadline for filing Section 727 complaints for cause. The motion must be filed before the deadline expires. The deadline for filing 11 U.S.C. § 727 complaints here was November 13, 2015.

The initial meeting of creditors here was set for September 14, 2015. 60 days from that date was November 13, 2015. This motion was filed on October 29, 2015. Thus, the motion complies with the temporal requirements of Rule 4004(b).

Given the need for further investigation of the debtor's financial affairs, cause for extension of the deadline exists. The motion will be granted and the deadline extended to April 29, 2016.